

## SECTION 5. OFFICE OF PROFESSIONAL CONDUCT.

A. General. The Supreme Court shall employ the Executive Director of the Office of Professional Conduct, who shall be an attorney actively licensed to practice law in the State of Arkansas, shall serve at the will of the Court, and shall devote full time and effort to promptly and efficiently perform the duties stated in this Section, and such other duties as directed by the

Court or the Committee.

B. Duties-Office.

(1) The Executive Director may attend and, at the request of the Committee, act as counsel in presenting testimony and other evidence at any hearing pursuant to these Procedures.

(2) The Executive Director, or, in his or her absence or disqualification from a case, the acting Executive Director, shall have power to administer oaths in all matters incident to the duties imposed by these Procedures, and such power and authority shall be coextensive with the State.

(3) The Executive Director shall be responsible for the administration of the business office and the security of the records. As authorized by and upon such terms as the Court shall direct, the Executive Director may employ such personnel, including staff attorneys, investigators, and temporary employees, and may retain independent counsel, as may be required to perform the administrative, investigative, and legal functions of the Committee and the Office of Professional Conduct. The Executive Director and the professional staff of the Office of Professional Conduct shall periodically attend training and continuing education programs.

(4) The Executive Director shall receive reports from financial institutions pursuant to Rule 1.15(d)(1) indicating that a properly payable instrument has been presented against a lawyer's trust account containing insufficient funds, irrespective of whether or not the instrument is honored, and take appropriate action in response to such information.

C. Duties-Complaints

(1) It shall be the duty of the Office of Professional Conduct to receive and investigate all complaints against any member of the Bar. Such complaints shall be docketed and assigned a permanent file number. The Office of Professional Conduct and the Committee may accept and treat as a complaint any writing signed by a judge of a court of record in this State regardless of whether such signature is verified or any per curiam order or opinion issued

by any appellate court. The Executive Director may initiate a complaint at his or her own instance.

(2) In lieu of filing and serving a formal complaint, the Executive Director may refer matters involving lesser misconduct, as defined in Section 17(C), to alternatives-to-discipline programs approved by the Supreme Court. Such programs may include, in

addition to the Arkansas Judges and Lawyers Assistance Program, programs for fee arbitration, arbitration, mediation, law office management assistance, psychological counseling, continuing education, and ethics.

(3) Upon a determination by the Executive Director that a complaint sets out allegations falling within the purview of the Committee and that those allegations are supported by sufficient evidence, the Executive Director shall provide any assistance needed in the preparation of the complainant's affidavit and shall process a formal complaint pursuant to these

Procedures.

(4) If the Executive Director determines that a complaint does not set forth sufficient grounds to reasonably support preparation of a formal complaint but contains information indicative of a misunderstanding or controversy between an attorney and a client or a third party who may be aggrieved by the conduct or circumstances and the best interests of the

integrity of the profession and the valid concerns of the complainant would be served by reconciliation or communication between the parties, the Executive Director may, at the request

of the complainant or in the judgment of the Executive Director, contact the attorney by telephone or letter advising the attorney of the nature of the complaint and may attempt an informal resolution. Such a procedure will not be considered a formal complaint.

(5) Review of the Executive Director's Decision.

(a) A complainant who is not satisfied with the Executive Director's determination that the allegations of the complaint fall outside the purview of the Committee or that the allegations are not supported by sufficient evidence to file a formal complaint may request a review of that determination by Panel C.

(b) The request for review shall be filed with the Executive Director in writing within twenty (20) days from the date of mailing of the letter to the address provided by the complainant in the grievance or other document of initial complaint, unless notified by the complainant in writing of a new address prior to the mailing of the letter, notifying the complainant of the determination of the lack of a basis for filing a formal complaint.

(c) The written request will set out in general terms the complainant's grounds for objection to the Executive Director's decision.

(d) Upon receipt of a request for review, the Executive Director will acknowledge in writing the request and shall forward the complaint information, including the complainant's grounds for objection to the Executive Director's decision, to five members of Panel C, one of whom will be a nonlawyer, directing that they review the Executive Director's disposition of the matter.

(e) The reviewing members, by majority vote, may (1) approve the Executive Director's disposition of the matter, (2) direct that a formal complaint be prepared, or (3) request further investigation of the matter by the Executive Director. Votes may be taken by written ballots on forms supplied by the Office of Professional Conduct or by telephone. With the administrative assistance of the Office of Professional Conduct, the result of the vote will be

made known to the Executive Director by the chair of Panel C. If a formal complaint is instituted, members of the five-member reviewing body shall not participate in subsequent proceedings in the matter.

(f) The Executive Director shall then notify the complainant in writing of

the results of the review and dismiss the complaint, initiate a formal complaint, or investigate further, as appropriate.

(g) There shall be no further review or appeal of Panel C's final decision on a review.

#### D. Staff Attorneys.

(1) All Staff Attorneys employed by the Executive Director shall be actively licensed to practice law in the State of Arkansas.

(2) Staff Attorneys shall serve at the direction and pleasure of the Executive Director and may perform all duties and possess all authority of the Executive Director as the Executive Director may delegate, except for the final determination of sufficiency of formal complaints and the authority and responsibilities provided in Sections 3(C)(8) (subpoenas) and 5(B)(2) (oaths), which authority may be exercised by the acting Executive Director in the absence of, or upon the disqualification from a case by, the Executive Director.

(3) In the event of the temporary inability of the Executive Director to fully discharge the duties of office, or when a vacancy exists in that office, the Deputy Director shall discharge such duties as the acting Executive Director. If the Executive Director determines that

a conflict of interest exists for the Executive Director with regard to a particular complaint, complainant, or respondent, the Executive Director may recuse from the matter, and the Deputy

Director shall discharge such duties as the acting Executive Director for that matter.

E. Compensation/Expenses. The Executive Director and staff of the Office of Professional Conduct shall be paid such reasonable salary and expenses as deemed necessary and

appropriate by the Supreme Court. Employee salaries, benefits, and expenses of the Office shall

be payable from funds budgeted to the Committee by the Supreme Court.

#### **Associated Court Rules:**

Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law

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